

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: JOHN KAUFFMAN Iowa City, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2009-AFO-04
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TO: John Kauffman
4301 Sharon Center Road SW
Iowa City, Iowa 52240

I. SUMMARY

This administrative consent order is entered into between John Kauffman and the Iowa Department of Natural Resources (DNR) for the purpose of resolving the issues of an unpermitted unformed manure storage structure at Mr. Kauffman's animal feeding operation. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Josh Sobaski, Field Office 6
Iowa Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353-1623
Phone: 319/653-2135

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director, Iowa Dept. of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. John Kauffman operates an animal feeding operation located at 4301 Sharon Center Road SW in Iowa City, Iowa (Section 25, Union Township, Johnson County). Mr. Kauffman has swine confinement buildings with a capacity of less than 500 animal units. The manure from the confinement buildings is stored in an unformed manure structure at the site.

2. On December 28, 2006, Mr. Kauffman and the DNR entered into Administrative Consent Order No. 2006-AFO-29 (Consent Order). The Consent Order involved freeboard exceedences and manure discharge violations at Mr. Kauffman's facility. The Consent Order required Mr. Kauffman to do the following: 1) maintain two feet of freeboard at all locations around the earthen storage structures at all times; 2) maintain the earthen storage structure in good working order at all times; 3) complete the following corrective actions required in a previous Notice of Violation letter: a) pump both cells to maintain compliance with freeboard requirements; b) maintain a minimum freeboard of two feet at all times; c) remove solids from both cells to increase the capacity; d) maintain the vegetation and weed growth; e) repair rodent damage; f) cut all trees around the cells; and g) repair all eroded areas; and 4) pay a penalty of \$5,000.00 in accordance with a monthly payment plan.

3. On September 16, 2008, Josh Sobaski, DNR Field Office 6 environmental specialist, visited Mr. Kauffman's facility to verify compliance with the Consent Order. Mr. Kauffman requested the visit be rescheduled because he was busy at the time. Mr. Sobaski agreed to reschedule the visit. Prior to leaving, Mr. Kauffman provided in writing an update on the status of the two earthen basins. He stated that the south basin should be cleaned out by April 2009 and that he was scraping out the north basin. Mr. Kauffman also informed Mr. Sobaski that he had constructed another earthen storage structure to contain animal waste being generated at the facility. He stated the structure was currently receiving confinement waste from the facility.

4. On September 24, 2008, Mr. Sobaski and Bert Noll, DNR Field Office 6 environmental specialist, returned to Mr. Kauffman's facility. Mr. Sobaski and Mr. Noll noted that while some of the manure solids had been removed from the north basin, the north basin still contained manure solids. The south basin had liquids in it with a two foot freeboard. Mr. Sobaski and Mr. Noll did not observe manure from the facility going to either of the basins, but did note that grass, weeds, and some small trees had been re-established on the berms of the south basin. Mr. Sobaski and Mr. Noll also observed that liquid manure was being discharged and moving down gradient from the confinement buildings and was being retained in a newly constructed unformed manure storage structure located north of the two existing basins. Mr. Kauffman stated that the new storage structure was constructed in the fall of 2007 and that he was unaware of the requirement to obtain a construction permit for this structure.

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5. On October 9, 2008, DNR Field Office 6 issued Mr. Kauffman a Notice of Violation letter for failing to obtain a construction permit prior to the construction of the unformed manure storage structure at the facility. The letter required Mr. Kauffman to contact DNR permitting to discuss available options to bring the structure into compliance. Mr. Kauffman was required to submit a written statement to DNR Field Office 6 by December 1, 2008 explaining his plan of action. On January 2, 2009, contacted DNR Legal by telephone and stated that he no longer was planning on using the unformed manure storage structure. He stated that nothing was currently going into the structure and that he planned to construct a new concrete storage structure this summer.

6. In addition to the violation noted in the October 9 Notice of Violation letter and the violations cited in the Consent Order issued in 2006, Mr. Kauffman was issued a Notice of Violation letter in May 2001 for failing to maintain two feet of freeboard. The letter required Mr. Kauffman to prevent future discharges from his facility and to maintain two feet of freeboard in each of the cells at all times.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.303(1)"a"(2) requires that a person must obtain a permit to construct an unformed manure structure for a confinement feeding operation. Mr. Kauffman failed to obtain a construction permit for the unformed manure storage structure at his facility constructed in 2007. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Mr. Kauffman agrees to do the following:

1. If necessary, Mr. Kauffman shall apply a construction permit for the construction of the concrete storage basin noted in Paragraph 5, Section III; and

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2. Mr. Kauffman shall pay a penalty of \$4,000.00 in accordance with the following payment plan:

\$182.00 due March 20, 2009;	\$166.00 due March 20, 2010;
\$166.00 due April 20, 2009;	\$166.00 due April 20, 2010;
\$166.00 due May 20, 2009;	\$166.00 due May 20, 2010;
\$166.00 due June 20, 2009;	\$166.00 due June 20, 2010;
\$166.00 due July 20, 2009;	\$166.00 due July 20, 2010;
\$166.00 due August 20, 2009;	\$166.00 due August 20, 2010;
\$166.00 due September 20, 2009;	\$166.00 due September 20, 2010;
\$166.00 due October 20, 2009;	\$166.00 due October 20, 2010;
\$166.00 due November 20, 2009;	\$166.00 due November 20, 2010;
\$166.00 due December 20, 2009;	\$166.00 due December 20, 2010;
\$166.00 due January 20, 2010;	\$166.00 due January 20, 2011; and
\$166.00 due February 20, 2010;	\$166.00 due February 20, 2011.

If any of the said payments are not received in accordance with the scheduled dates, the remainder of the penalty shall be due immediately. Failure to pay the penalty in full shall result in referral to the Department of Revenue and Finance for collections proceedings.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$4,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit - Mr. Kauffman has saved time and money by not properly obtaining a construction permit prior to the construction of the new storage structure. He was able to use the new storage structure before it had been approved of by the DNR. Therefore, \$200.00 is assessed for this factor.

Gravity of the Violation - One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of

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violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The violation cited in this order threatens the integrity of the regulatory program because compliance with the regulations is required of all persons in this state. As set out above, the DNR was unable to evaluate the structure prior to construction. Based on the above considerations, \$1,800.00 is assessed for this factor.

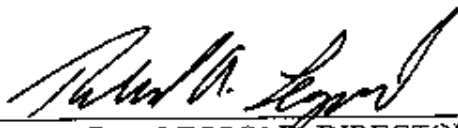
Culpability – All animal confinement operators have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that the operator's conduct is subject to DNR's rules. Based on the above considerations, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of John Kauffman. For that reason, Mr. Kauffman waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 9 day of
Feb., 2009.



JOHN KAUFFMAN

Dated this 2nd day of
Feb., 2009.

#59947; DNR Field Office 6; Kelli Book; Ken Hessenius; EPA; VIII.A.1